
**FINAL RECOMMENDATIONS FOR
THE ACUPUNCTURE BOARD
April 12, 2005**

**RECOMMENDATIONS OF THE JOINT COMMITTEE ON BOARDS,
COMMISSIONS, AND CONSUMER PROTECTION
AND THE DEPARTMENT OF CONSUMER AFFAIRS**

ISSUE #1: Should the Acupuncture Board be continued or should the profession be regulated by a bureau under the Department?

Recommendation #1: *The Joint Committee and the Department recommend that the Board of Acupuncture should be sunsetted and its functions and duties to regulate the profession of acupuncture be transferred to the Department.*

Comments: According to the Department, historically, the Board has had trouble with getting involved in the wrong issues, and spending too much time on them without even completing work on those issues. For example, over the past several years, the Board has advocated for enhancing the title of its licensees and further increasing the educational requirements for licensees. (The Board attempted to raise the educational requirement to 3,200 hours through the regulatory process, which the Department did not approve.) The Little Hoover Commission (Commission), in its report, *Regulation of Acupuncture: A Complementary Therapy Framework* (report), found that the Board has missed significant opportunities to protect the public, particularly in the area of consumer information. One of the most significant examples of this is the Board's failure to promulgate regulations concerning single use needles. While the Board is now working on regulations on this issue, it seems they are only acting after repeated urging from the Commission and the Joint Committee. The report found that none of the Board's agendas over the last five years included a discussion of disposable, single-use needles or emerging research on threats to public health. However, the agendas did show a pattern of frequent discussions regarding enhanced title (Doctor of Oriental Medicine) and various means of restricting entry into the profession. For these reasons, and others, the Commission found that the Board has at times acted more as a venue for promoting the profession rather than regulating the profession to protect consumers.

The Board has not always followed the recommendations of the Department and the Joint Committee. In 1998, the Board was asked to evaluate the national licensure exam for acupuncture and compare it to the California Acupuncture Licensing Exam. Also in 1998, the Board was asked to evaluate the acupuncture school approval processes of the Bureau for Private Postsecondary and Vocational Education, the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM) and the Board. As of the Board's 2002 sunset review, they had not acted on either recommendation. As a result, in 2002, the Joint Committee asked the Commission to review these issues.

Additionally, because the Board has such a relatively small staff, it is not always able to operate efficiently. The Board takes on numerous responsibilities and it does not have the staff resources to adequately manage all of those responsibilities. The Commission found that reviewing and approving schools is a “substantial and episodic burden on the Acupuncture Board and information received in the course of the Commission’s review indicates that the State’s process is not as rigorous as the process used by ACAOM.” The Commission recommended that the state should rely on ACAOM and other recognized accreditation institutions to accredit acupuncture schools, while ensuring that state-specific curriculum standards are met. The Board disagreed with this recommendation but did not provide detailed reasons to back up their position. The school approval process takes a significant amount of Board resources, while possibly providing little or no added benefit to consumers or the profession.

It was additionally found by the Joint Committee that the Board:

- Misreads its governing statutes concerning the scope of practice of licensees;
- Seems unable to respond to direction from the Department and the Legislature, or to criticism from any of the many neutral bodies that have examined it and made recommendations for improvement; and,
- Seeks to erect significant barriers to new acupuncturists becoming licensed.

Most recently, the Little Hoover Commission report identifies the core problem this way:

“Many of the specific issues that the Governor and the Legislature asked the Commission to review have festered because the Acupuncture Board has often acted *as a venue for promoting the profession rather than regulating the profession.*” (*Little Hoover Commission, Regulation of Acupuncture: A Complementary Therapy Framework: September 2004*, page 63 – emphasis added).

Therefore, the Department and the Joint Committee recommends that the Board sunset and that its functions be transferred to the Department.

ISSUE #2: Should licensed Acupuncturists be given the specific authority to diagnose within their scope of practice?

Recommendation #2: *The ability to diagnose within an Acupuncturist’s scope of practice seems inherent in the existing statutes. However, to resolve any ambiguity about this, the scope of practice statute should be amended to clarify that licensed Acupuncturists have the authority to diagnose within their scope of practice.*

Comments: There has been ongoing debate about whether licensed acupuncturists have the authority to “diagnose.” The Board proposes to amend B&P Code section 4937 to provide for this authority.

It appears that the ability to diagnose is inherent in any healing art profession such as acupuncture. However, the scope of this authority for every kind of health care professional must be carefully

monitored. This is particularly true for professions such as acupuncture whose licensees are restricted by statute to particular treatment modalities.